

**A Ung Goh Guan & Anor v Chan Eng Hooi (as executor of the
estate of Chan Chin Kim, deceased) & Ors and another appeal**

**B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS P-01–137
OF 2010 AND P-01(IM)–146 OF 2010
KN SEGARA, MOHD HISHAMUDIN AND JEFFREY TAN JJCA
22 OCTOBER 2010**

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*Land Law — Acquisition of land — Compensation — Land administrator
granted order to pay compensation money into court — Dispute between parties as
to their entitlement to compensation — Whether dispute should be determined by
way of interlocutory proceedings in land administrator's application to pay into
court or by separate distinct proceedings — Whether monies paid out of court ought
to be restored — Land Acquisition Act 1960 s 29*

D

E When the Penang State Government compulsorily acquired lands known as
Lot 1395 and Lot 1391 that were situated in Penang ('the two lots of land'), the
persons interested in the two lots of land were awarded a compensation of
RM3,641,648.66 and RM42,500 respectively. Thereafter the land
administrator made an ex parte application under s 29 of the Land Acquisition
Act 1960 ('the Act') to deposit into court the sum of RM3,684,149.66, which
F was the whole compensation award in respect of the two lots of land. The High
Court allowed the land administrator's application to pay the compensation
money into court. In his affidavit the land administrator had listed four names
as persons interested in Lot 1395 and nine names as persons interested in Lot
G 1391. Thereafter a dispute arose between the parties named in the land
administrator's affidavit as to their entitlement to the monies paid into court by
the land administrator as compensation. Ung Goh Guan and another ('the
appellants') alleged that they were the real beneficial owners and bona fide
purchasers for value and that Chan Chin Kim and The Gim Khoon, who were
H according to the land administrator's affidavit awarded RM682,158.15 each
for Lot 1391, were not entitled to the compensation sum of RM682,158.15.
According to the appellants Chan had sold his interest in the land to a third
party from whom the appellants had purchased it and thus was merely a bare
trustee. The first appeal was the appellant's appeal against the High Court order
I allowing payment out of money deposited in court by the land administrator
under s 29 of the Act. The appellants sought, inter alia, an order for the monies
paid out of court from the sum of RM3,684,149.66 paid into court by the land
administrator to remain in court until final determination of the claim by the
appellants as beneficial owners of the land; and for parties to be at liberty to

litigate their respective rights by way of separate and distinct proceedings. The second appeal related to the question of interest on the money paid out. A

Held, allowing the first appeal with no order as to costs:

- (1) When the land administrator made payment into court, all proceedings under the ex parte application under s 29 of the Land Acquisition Act 1960 came to an end and there were no live issues to be litigated with the land administrator. Any dispute as to the entitlement of the monies in court between any parties, not involving the land administrator, must be determined by separate and distinct civil proceedings instituted by the rival claimants to establish their rights to the same. Thereafter, upon their legal or equitable rights being resolved or determined, the successful claimant should move the court for payment out of the money. As such, the proceedings before the High Court in determining the rights of the parties to the money paid into court as the compensation award by the land administrator were clearly flawed and inherently irregular as they could occasion a serious miscarriage of justice (see paras 10 & 12–14). B C D
- (2) There were serious disputes of fact and law that should be properly tried in a full trial (see para 18). E
- (3) The second appeal was a non-issue as a result of the order made in the first appeal to restore the money into court (see para 3).

[Bahasa Malaysia summary]

Apabila Kerajaan Negeri Pulau Pinang secara wajib memperolehi tanah-tanah yang dikenali sebagai Lot 1395 dan Lot 1391 yang terletak di Pulau Pinang ('kedua-dua lot tanah tersebut'), orang-orang yang mempunyai kepentingan di dalam kedua-dua lot tanah tersebut masing-masing diawardkan pampasan sejumlah RM3,641,648.66 dan RM42,500. Kemudiannya pentadbir tanah membuat permohonan ex parte di bawah s 29 Akta Pengambilan Tanah 1960 ('Akta') untuk mendepositkan ke dalam mahkamah sejumlah RM3,684,149.66, yang mana adalah keseluruhan award pampasan berkaitan kedua-dua lot tanah tersebut. Mahkamah Tinggi membenarkan permohonan pentadbir tanah untuk membayar wang pampasan kepada mahkamah. Dalam afidavitnya pentadbir tanah telah menyenaraikan empat nama sebagai orang-orang yang mempunyai kepentingan dalam Lot 1395 dan sembilan nama sebagai orang-orang yang mempunyai kepentingan dalam Lot 1391. Kemudiannya pertikaian berbangkit di antara pihak-pihak yang dinamakan di dalam afidavit pentadbir tanah terhadap hak mereka kepada wang tersebut yang dibayar kepada mahkamah oleh pentadbir tanah sebagai pampasan. Ung Goh Guan dan seorang lagi ('perayu-perayu') mendakwa bahawa mereka adalah pemilik-pemilik benefisial yang sebenar dan pembeli-pembeli bona fide untuk nilai dan bahawa Chan Chin Kim dan Teh Gim Khoon, yang mana mengikut afidavit pentadbir tanah masing-masing diawardkan F G H I

- A RM682,158.15 untuk Lot 1391, tidak berhak kepada jumlah pampasan RM682,158.15 tersebut. Mengikut perayu-perayu Chan telah menjual kepentingannya dalam tanah kepada pihak ketiga daripada mana perayu-perayu telah membelinya dan oleh itu dia hanya pemegang amanah sahaja. Rayuan pertama adalah rayuan perayu terhadap perintah Mahkamah
- B Tinggi membenarkan pembayaran wang yang didepositkan dalam mahkamah oleh pentadbir tanah di bawah s 29 Akta Pengambilan Tanah 1960. Perayu-perayu memohon, antara lain, perintah untuk wang yang dibayar di luar mahkamah daripada jumlah RM3,684,149.66 dibayar kepada mahkamah
- C oleh pentadbir tanah kekal dalam mahkamah sehingga penentuan akhir terhadap tuntutan yang dibuat oleh perayu-perayu sebagai pemilik benefisial tanah tersebut; dan untuk pihak-pihak bebas untuk melitigasikan hak-hak mereka masing-masing melalui prosiding berasingan dan berbeza. Rayuan kedua berkaitan kepada persoalan faedah atas wang yang dibayar.

D **Diputuskan**, membenarkan rayuan pertama tanpa perintah untuk kos:

- (1) Apabila pentadbir tanah membuat bayaran kepada mahkamah, kesemua prosiding di bawah permohonan ex parte di bawah s 29 Akta tamat dan
- E tiada isu yang wujud untuk dilitigasikan dengan pentadbir tanah. Apa-apa pertikaian terhadap hak kepada wang dalam mahkamah di antara pihak-pihak, tidak melibatkan pentadbir tanah, mesti ditentukan oleh sivil prosiding secara berasingan dan berbeza dimulakan oleh penuntut-penuntut saingan untuk membuktikan hak-hak mereka
- F kepadanya. Kemudiannya, selepas hak sah dan ekuiti mereka diselesaikan atau ditentukan, penuntut yang berjaya patut memohon kepada mahkamah untuk pembayaran wang tersebut. Oleh itu, prosiding-prosiding di hadapan Mahkamah Tinggi dalam menentukan hak-hak pihak-pihak kepada wang yang dibayar kepada mahkamah
- G sebagai award pampasan oleh pentadbir tanah adalah jelas cacat dan memang tidak sekata kerana ia akan membangkitkan ketidakadilan yang serius (lihat perenggan 10 & 12–14).
- (2) Terdapat pertikaian-pertikaian fakta dan undang-undang yang serius yang patut dibicarakan secara betul di dalam perbicaraan penuh (lihat perenggan 18).
- H (3) Rayuan kedua adalah bukan isu akibat perintah yang dibuat dalam rayuan pertama untuk mengekalkan wang di dalam mahkamah (lihat perenggan 3).]
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Notes

For cases on compensation, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 2125–2169.

Cases referred to

Wu Shu Chen (sole executrix of the estate of Goh Keng How, deceased) & Anor v Raja Zainal Abidin bin Raja Hussin [1997] 2 MLJ 487; [1997] 3 AMR 2186, CA (refd)

Legislation referred to

Land Acquisition Act 1960 s 29
National Land Code s 340(4)(b)
Rules of the High Court 1980 O 7 r 2(1), (1A)

Appeal from: Originating Summons No 24–136 of 2002 (High Court, Pulau Pinang)

(Presgrave & Matthews) for the appellant in Civil Suit No P-01–137 of 2010.
(Ban Eng Annual & Foong) for the appellant in Civil Suit No P-01(IM)-146 of 2010.

(Ban Eng Annual & Foong) for the respondent in Civil Suit No P-01–137 of 2010.
(Presgrave & Matthews) for the first and second respondents in Civil Suit No P-01(IM)-146 of 2010.

(Lim Ooi & Partners) for the third respondent in Civil Suit No P-01(IM)-146 of 2010.

KN Segara JCA (delivering judgment of the court):

[1] The two appeals before us are consequent to the payment out of money deposited in court by the land administrator under s 29 of the Land Acquisition Act 1960 ('LAA 1960') in respect of compensation awarded to persons interested in the lands known as Lot 1395 (GM 901) and Lot 1391 (GM 1727), Mukim 13, Daerah Timur Laut, Penang, compulsorily acquired via Penang State *Gazette* Notification No 328 dated 6 December 2001.

[2] At the conclusion of the submission of the parties, in respect of Appeal No P-01–137 of 2010, we allowed the appeal with no order as to costs and directed that:

- (a) the order of the High Court dated 19 January 2010 made in the ex parte Originating Summons No 24–1368 of 2002 is set aside;
- (b) monies paid out of court, pursuant to the order, be restored to the court as deposit by the land administrator made under s 29 of the LAA 1960 and to remain in court as such deposit until final determination of the claim by the appellants to be beneficial owners of the land at all material times; and
- (c) parties are at liberty to litigate their respective rights by way of separate and distinct proceedings, and not by way of interlocutory proceedings in

A the ex parte originating summons by the land administrator to deposit the compensation money into court.

[3] In respect of Appeal No P-01-146 of 2010 we made no order as it related only to the question of interest on the money paid out. It is a non-issue as a result of our order (made in P-01-137 of 2010) to restore the money into court.

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[4] Section 29 of the LAA 1960 provides as follows:

C (1) After a notice of award in Form H has been served in the manner prescribed by section 53 upon all interested persons the Land Administrator shall, as soon as may be, make payment of each amount awarded to the person entitled unless —

- (a) there shall be no person competent to receive such payment;
- D (b) the person entitled thereto does not consent to receive the amount awarded; or
- (c) there is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof.

E (2) In the cases referred to in subsection (1) (a), (b) and (c) the Land Administrator shall apply ex parte to the Registrar of the Court in chambers, supported by affidavit, for an order to deposit the amount awarded into Court and, notwithstanding anything to the contrary in the law for the time being in force relating to civil procedure, the Registrar shall have power to make such order.

F [5] Every originating summons must be in Form 6, 7 or 8 whichever is appropriate (see O 7 r 2(1) of the Rules of the High Court 1980 ('RHC')). Order 7 r 2(1)(1A) of the RHC stipulates that every originating summons shall state in its intitlement the particular rule of court and provisions of written law under which the court is being moved.

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[6] The land administrator has appropriately used Form 8 (ex parte originating summons) and set out in the intitlement the correct provision of the written law under which the court is being moved when he filed the ex parte Originating Summons No 24-1368 of 2002 on 19 August 2002 to deposit into court the sum of RM3,684,149.66. The supporting affidavit of the land administrator (Abdul Latif bin Omar) dated 16 August 2002 states:

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I 2. Suatu siasatan bagi tujuan pengambilan tanah telah diadakan oleh Pentadbir Tanah Daerah Timur Laut di bawah Seksyen 12 Akta Pengambilan Tanah 1960, bagi lot 1395 GM901 dan 1391 GM1727 Mukim 13, Daerah Timur Laut terlibat dengan Projek Tapak Balai Bomba dan Kuarters di Air Itam, mengikut Warta Kerajaan Negeri Pulau Pinang No. 328 pada 6hb Disember, 2001.

3. Di akhir siasatan tersebut Pentadbir Tanah Daerah Timur Laut telah memutuskan bahawa pampasan berjumlah RM3,684,149.66 diberikan kepada *pemilik berdaftar dan pemilik bangunan bagi lot sepertimana dinyatakan pada lampiran 'A' berkepil.* A
4. Oleh kerana terdapat pemilik-pemilik yang *telah meninggal dunia, tidak dapat dikesan, Pemegang Amanah, Pertikaian Hak dan terdapat pencatit kaveat yang didaftarkan dalam Daftar Hak bagi kedua-dua lot berkenaan* dan tiada sebarang probate atau surat-surat Mentadbir dikeluarkan atau diambil maka tidaklah ada sebarang orang yang berhak atau layak menerima pampasan yang berjumlah (Ringgit: Tiga Juta Enam Ratus Lapan Puluh Ribu Satu Ratus Empat puluh Sembilan dan sen Enam Puluh Enam sahaja) disimpan ke dalam Mahkamah sebagaimana peruntukan Seksyen 29(1) dan 29(2) Akta Pengambilan Tanah, 1960. B
C
5. Dengan itu juga saya memohon untuk mendapatkan suatu perintah seperti yang dipohon. D

[7] On 23 October 2002 the High Court allowed the land administrator's application to pay into court as per the ex parte originating summons. Nevertheless, we observe the land administrator had in fact forwarded the whole compensation award to court on 5 September 2002 and receipts were issued by the court on 11 September 2002 and 10 September 2002 for the sum of RM3,641,649.66 and RM42,500, respectively. E

[8] In the 'Lampiran A' referred to by the land administrator in his affidavit, four names have been listed under the column 'pemilik' for Lot 1395 and nine names have been listed for Lot 1391 under the column 'pemilik'. Against each name the reason why the amount of compensation stated in the column 'pampasan' is deposited is set out in the column 'Sebab disimpan di Mahkamah'. F

[9] Chan Chin Kim and Teh Gim Khoo (the first and second respondents in Appeal No P-01-137 of 2010) are listed as 'pemilik' for Lot 1391 and, under the column 'bahagian', each appears to have '1/4' share in the said lot. In the column for 'Sebab disimpan di Mahkamah' is set out 'Terdapat Pencatit Kaveat'. Under the column 'Pampasan' the sum of RM682,158.15 has been awarded to each of them. G
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[10] Now, with the payment into court, all proceedings under the ex parte originating summons by the land administrator come to end. There are no live issues to be litigated with the land administrator, thereafter, under s 29 of the LAA 1960 by any party. I

- A [11] There cannot emanate from the ex parte originating summons any interlocutory proceedings to ‘intervene’, by any party. This is a very trite, elementary and fundamental legal proposition in civil procedure with reference to any ex parte originating summons.
- B [12] Any dispute as to the entitlement of the monies in court between any parties, not involving the land administrator, must be determined by separate and distinct civil proceedings instituted by the rival claimants to establish their right to same.
- C [13] Thereafter, upon their legal or equitable rights being resolved or determined, the successful claimant should move the court for payment out of the money. This is clearly demonstrated in *Wu Shu Chen (sole executrix of the estate of Goh Keng How, deceased) & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487; [1997] 3 AMR 2186. We are not persuaded by the
- D contention of counsel for the first and second respondents that this case is authority for the proposition that any application for payment out under the LAA 1960 is to be made in the appropriate ex parte originating summons in which, on the application of the land administrator, the order for payment into court of the compensation award was made.
- E
- F [14] The proceedings before the High Court in determining the rights of the parties to the money in court by ‘interveners’ in the ex parte originating summons in which, on the application of the land administrator, the order for payment into court of the compensation award was made, were clearly flawed and inherently irregular. We unhesitatingly deprecate such proceedings as they could occasion a serious miscarriage of justice.
- G [15] The first appellant alleges that he was paid compensation for the factory/godown which he was occupying, but as to the compensation for the land, it was paid into court by the land administrator by way of the ex parte originating summons. The appellant asserts he was in occupation since 1987, as tenant and, since 1992, as buyer from Kim Guan Thye, with no interference or disturbance by the respondents. He further alleges that he filed a caveat in
- H 1992 and renewed it in 1998. He also asserts that his predecessor, Kim Guan Thye, had filed a caveat in 1991 and no action had been taken by the respondents to challenge the caveat. Interim title was issued in 1993, reflecting the caveats, and no challenge to this was made by Chan Chin Kim and Teh Gim Khooon (ie the first and second respondents in Appeal No P-01–137 of
- I 2010) at any time before the land was compulsorily acquired.
- [16] The appellants alleged that they are the real beneficial owners and bona fide purchasers for valuable consideration and that the first respondent was not entitled to the compensation money for RM682,158.15, being the

compensation money for the acquisition of the said 26,752 square ft, which belonged to the appellants who had bought it from Kim Guan Thye development for valuable consideration.

A

[17] The appellants assert that s 340(4)(b) of the National Land Code 1965 allows determination of title and/or interest by way of operation of law. Prior contractual rights will supersede the interest of the registered proprietor who may have notice and be privy to it. The appellants allege, inter alia, that the first respondent had sold his interest and, subsequently, the appellants had purchased it from the third party, Kim Guan Thye development. The appellants allege that, in the circumstances, they are the beneficial owners of that portion of the acquired land, and the first respondent is merely a bare trustee.

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[18] We are unanimous that there are serious disputes of fact and law that must be properly tried in a full trial. We are of the view that the respective claims, cause of action and defence of the parties to the compensation money in court, should be fully pleaded and set down for trial.

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[19] The appeal in P-01-137 of 2010 is allowed with no order as to costs. The consequential orders, as set out at the outset of this judgment, are reaffirmed. It follows that we make no order in Appeal P-01-146 of 2010.

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First appeal allowed with no order as to costs.

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Reported by Kohila Nesan

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